

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 14TH DAY OF AUGUST 2012

BEFORE

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

W.P.NO.34095 OF 2010 (GM-RES)

C/W

W.P.NO.37312 OF 2010(GM-RES)

W.P.NO.34095 OF 2010

BETWEEN:

MANGALORE SEZ LIMITED
3RD FLOOR, MUDA BUILDING
ASHOKNAGAR
URVA STORES
MANGALORE-575 006.

REGD OFFICE AT NO.72/4, 1ST FLOOR
CUNNINGHAM ROAD
BANGALORE-560 052.
REPRESENTED BY ITS MANAGER

.....PETITIONER

(BY SRI:P.D. VISHWANATH, ADV.,)

AND:-

1. KARNATAKA INFORMATION COMMISSION
CONSTITUTED UNDER THE RIGHT TO INFORMATION
ACT,
BANGALORE-560 001.
BY STATE INFORMATION COMMISSIONER
2. SRI. B.S. KARUNKAR
AGE MAJOR
NO.AL-25
NITK CAMPUS

SURATKAL
SRINIVASANAGAR-575 025.
D.K. DISTRICT.

- | | |
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| 3. STATE OF KARNATAKA
DEPARTMENT OF COMMERCE
& INDUSTRIES
VIDHANA SOUDHA
BANGALORE-560 001 DATED
BY ITS SECRETARY | } IMPEADED
AS PER COURT
ORDER
04.11.2010 |
| 4. UNION OF INDIA
DEPARTMENT OF COMMERCE
& INDUSTRIES
NEW DELHI
BY ITS SECRETARY | |
-RESPONDENTS

(BY SRI: V.K. NARAYANA SWAMY, CGC FOR R4
NARENDRA PRASAD, HCGP FOR R3
G.B.SHARATH GOWDA, ADV., FOR R1
MOHAN BHAT, ADV., FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
SET-ASIDE THE ORDER DATED 7.9.2010 VIDE
ANNEXURE-J PASSED BY THE STATE INFORMATION
COMMISSIONER, THE FIRST RESPONDENT.

W.P.NO.37312 OF 2010

BETWEEN.

MANGALORE SEZ LIMITED
3RD FLOOR, MUDA BUILDING
ASHOKNAGAR
URVA STORES
MANGALORE-575 006.

REGD OFFICE AT NO.72/4, 1ST FLOOR
CUNNINGHAM ROAD
BANGALORE-560 052.

REPRESENTED BY ITS MANAGER

.....PETITIONER

(BY SRI:P.D. VISHWANATH, ADV.,)

AND:-

1. KARNATAKA INFORMATION COMMISSION
CONSTITUTED UNDER THE RIGHT TO INFORMATION
ACT,
BANGALORE-560 001.
BY STATE INFORMATION COMMISSIONER

2. SRI. H. SUNDAR RAO
AGE MAJOR
'NESARA', KEREKODI
B.C. ROAD
POST:MODAMKAPU-574 219
D.K. DISTRICT.

.....RESPONDENTS

(BY SRI:G.B.SHARATH GOWDA, ADV., FOR R1
SHEELA RAMANATHAN, ADV., FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
SET-ASIDE THE ORDER DATED 14.10.2010 VIDE
ANNEXURE-M PASSED BY THE STATE INFORMATION
COMMISSIONER, THE R1.

THESE WRIT PETITIONS COMING ON FOR
PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE
COURT MADE THE FOLLOWING:-

ORDER

The petitioner has sought for quashing the
orders Annexures-J and M dated 07.09.2010 and

14.10.2010 passed by the Karnataka Information Commission-first respondent as well as the order dated 19.10.2010 vide Annexure- L. The petitioner has also sought for a declaration that it is not a 'public authority' under the provisions of Right to Information Act, 2005 and that the provisions of Right to Information Act, 2005 are not applicable to the petitioner.

2. The petitioner is a company registered under the provisions of Indian Companies Act. It is incorporated on 24th day of February 2006 as is clear from Annexure-A. The share holding pattern of the petitioner is listed in Annexure-B. The memorandum of association of the petitioner company is produced at Annexure-C.

Respondent No.2 filed an application under the provisions of Right to Information Act,

2005(hereinafter referred as “RTI Act” for short) before the first respondent seeking certain information. The same is refused by the petitioner on the ground that the petitioner does not come under the provisions of RTI Act. Hence, the 2nd respondent filed a complaint before Karnataka Information Commission, Bangalore. The first respondent on hearing, passed the impugned orders Annexure-J and M instructing the petitioner herein to show-cause within 30 days as to why action should not be taken against the Executive Director by levying penalty. Thereafter, another order came to be passed as per Annexure-L dated 19.10.2010 (in W.P.No.34095/2010) directing the Managing Director of the petitioner company to recover penalty of ₹5,000/- levied on Sri. A.G. Pai, Executive Director and Chief Executive Officer, Mangalore SEZ Ltd., from his salary and credit the

same to the Government Head of Account. The orders i.e., Annexures-J, L and M are called in question in these writ petitions.

Petitioner's counsel is absent. Heard the learned counsel for respondent Nos.1, 2, 3 and 4 & perused the material on record including the averments made in the writ petitions.

3. The case of the petitioner is that it does not come within the purview of RTI Act, inasmuch as, the same is not a public authority as defined under Section 2(h) of RTI Act, 2005.

Writ petitions are opposed by learned counsel for respondent Nos.1,2, 3 and 4 by filing statement of objections.

4. The only question that arises for consideration in these petitions is as to whether the petitioner falls within the definition of 'public

authority' as contained under Section 2(h) of RTI Act. Before proceeding further, it is beneficial to note the provisions of 2(h) of RTI Act, which read thus:-

“Public Authority” means any authority or body or institution of self-Government established or constituted:-

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government,

and includes any-

(i) body owned, controlled or substantially financed;

- (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

The word “substantially financed” is not defined in the RTI Act. Section 3 of the Act specifies that all citizens shall have the right to information subject to the provisions of the Act. Thus Right to information of every citizen is the legislative recognition. Right to information includes right to access information. The legislative declaration contained in Section 3 of the Act that all citizens shall have the information have to be borne in mind while interpreting the provision “substantially financed” and “funds provided directly or indirectly” occurring in Section (h) of RTI Act. The funds provided by appropriate Government may not necessarily mean providing funds from what belong to the appropriate Government either exclusively or

otherwise, but also those come through the machinery of the appropriate Government including allocation of funds with either the concurrence or clearance of the appropriate Government. Having regard to the object sought to be achieved by the RTI Act, the said provision under consideration has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the institutions through the appropriate Government or with its concurrence or clearance. The use of the words “funds provided by the appropriate Government” as found in Section 2(h) (d) (ii) enlarges and dilates the scope of the words “substantially financed” in that provision. It is by now well settled that it would never be assumed that the legislature uses language superfluously. The Courts will not treat any legislative usage as

surplusage, but will look at the very use of the language by the legislature, as intentional of conveying true and complete meaning of what the legislature intended to say. The word “substantial” has no fixed meaning. For the purpose of legislation, it ought to be understood definitely by construing its context. As has been held by this Court in the case of *Bangalore International Airport Limited Vs. Karnataka Information Commission and others* reported in ILR 2010 KAR 3214, the word “substantial” has to be understood in contradiction to the word trivial and where the funding is not trivial, to be ignored as pittance, the same would be substantial funding because it comes from public funds. It need not necessarily be by a cash flow but also by any other kind.

5. In the matter on hand, as is clear from Annexure-B, about 50% of holding of the petitioner

is from the Government organisations viz., Oil and Natural Gas Corporation Limited, Karnataka Industrial Area Development Board, ONGC Mangalore Petro Chemicals Limited. The number of shares held by these three organisations come to about 49.96%. Oil & Natural Gas Corporation Limited though is a company incorporated under the Companies Act, the same is owned by Government of India. Karnataka Industrial Area Development Board is also a State Government Organisation. Since 49.96% holding of the petitioner is by Governmental organisations, having regard to the object sought to be achieved by the RTI Act, in my considered opinion, the provision of Section 2(h) has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the authority through the appropriate Government or with its

concurrence or its clearance. Hence, in my view, the petitioner company Mangalore SEZ Limited, Mangalore can be classified as a 'public authority' and non-Government organisation which is substantially financed directly or indirectly by funds provided by the appropriate Government.

6. In view of the above, the petitioner is bound to furnish the information as sought for by the private respondents. Accordingly, no interference is called for. Petitions fail and the same stand dismissed.

Sd/-
JUDGE

*mn/-